

TR Wireless News

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subpoena and other enforcement powers, activities of substantial bidders operating without listed resources," NextWave said. The agency also "should clarify how it intends to punish bad actors that have undermined the integrity of the auction," and it "should clarify that licenses reclaimed as a result of fronting or other ineligibility will be reaucted immediately or granted immediately to the second-highest bidder," the company said.

In its letter to Ms. Farquhar, NextWave said "the unusual bidding activity associated with this auction mandates additional scrutiny of some bidders." The company noted that FCC rules require auction participants to disclose their business affiliations and financial investors "for purposes of determining real-parties-in-interest."

The Commission's anticollusion rules also require auction participants to reveal any parties with which they have "implicit or explicit bidding arrangements or agreements," NextWave added. The company said the integrity of the auction could be threatened by the actions of "sham" operations or "front" companies. NextWave said it plans to "pursue all available avenues including, if necessary, action in the courts, to ensure that its rights are protected and that other applicants comply with the Commission's rules."

In a separate letter to Ms. Farquhar, GO said the Form 175 applications and up-front deposits submitted by several bidders "no longer demonstrate sufficient financial ability to support even current bidding levels, let alone the significant capital requirements of constructing a PCS network." GO asked the FCC to (1) "require a confidential disclosure of each bidder's assets," (2) "investigate and deter potential fronts and speculators," and (3) "reaffirm the Commission's immediate reauction policy."

James Titzell, Vice President-corporate development of DCR Communications, Inc., another company bidding in the auction, said, "The FCC should investigate suspected fronts, but it should not change its current rules or suspend the auction. Either of those would have the effect of vacating the auction," he added.

If the FCC decides to award licenses to the second-highest bidder in cases where the winning bidder is deemed ineligible to hold a PCS license, it will create a "must-win" situation where participants bid just to position themselves as the second-highest bidder in hopes of claiming the license, Mr. Titzell added.

Kathleen O'Brien Ham, Chief of the FCC's Auctions Division, told *TRWN* she is confident that each of the 255 companies originally deemed eligible to participate in the PCS auction submitted acceptable application forms.

She said FCC staff members still were reviewing NextWave's request. The Commission remains vigilant concerning auction activity, Ms. Ham said. "But we want to be careful that we don't end up in the middle of a bidding war." Ms. Ham noted that auction rules require winning bidders to submit additional information about their equity structures once the PCS auction concludes. The same rules also permit parties to oppose PCS license applications, she said.

According to FCC sources, each of the agency's five Commissioners has the power to subpoena witnesses and documents. Last year the Commission used its subpoena powers to obtain documents and testimony from individuals as part of an FCC investigation of alleged "misconduct" during a 1994 auction of interactive video and data service (IVDS) licenses (*TRWN*, Aug. 11 and 25, 1994; and Feb. 23, 1995).

Auction rules also permit the agency to conduct "spot" audits of bidders. Although the FCC never has audited bidders while an auction was in progress, the agency did audit bidders

who allegedly "misrepresented" themselves as "designated entities" during the last IVDS auction. (Designated entities are small businesses, woman- and minority-owned enterprises, and rural telephone companies.)

Auction observers told *TRWN* that potential "speculators" pose a real threat to the integrity of the auction. Another *TRWN* source predicted that several bidders may have trouble meeting their financial obligations to the government when the auction is over. FCC rules require PCS bidders to make a downpayment of 5% of their total bids five days after the sale ends. Another 5% is due five days after PCS licenses are granted by the FCC.

But rules designed for the C block license sale allow most auction winners to take advantage of a 10-year installment plan to pay the balance due on their licenses. Qualified bidders also are entitled to 25% discounts on their licenses.

"The FCC has given no thought to the potential downside of this auction because they're too caught up in the '\$7 billion' headlines," *TRWN*'s source added. "Things could turn out very badly for the Commission." Another observer said licensing delays could result from "massive litigation" once the PCS auction is over.

"There is a huge cloud over the [block]," he said. A number of parties are likely to oppose auction winners' license applications, he said, and there could be further action in the courts. "As a result, licenses probably won't get issued for six months to a year after the auction ends."

REGULATORY FRONT

USTA, NARUC Raise Red Flag over FCC's 'Bill-and-Keep' Proposal

Parties that plan to file comments this week in an FCC rulemaking proceeding involving a new interconnection model for LECs (local exchange carriers) and CMRS (commercial mobile radio service) providers already have begun wrangling over the competitive effects of the so-called "bill-and-keep" proposal. Late last year the Commission proposed to implement interconnection rules that would allow LECs and CMRS providers to terminate each other's calls without charging the originating carrier for call completion (*TRWN*, Dec. 14, 1995; and Jan. 11).

Since then, the U.S. Telephone Association and the National Association of Regulatory Utility Commissioners (NARUC) have announced plans to oppose the rulemaking proposal. Comments on the proposal in Common Carrier docket 95-185 were due March 4, as *TRWN* was going to press.

During a Washington press briefing last week, USTA President and Chief Executive Officer Roy M. Neel disputed wireless industry claims that adopting such a system for call-termination compensation would promote local exchange service competition. Mr. Neel contrasted the FCC's proposal for interim bill-and-keep compensation with what he called a comprehensive interconnection model outlined in the Act. When the FCC adopted its proposal late last year, it had suggested that the bill-and-keep approach would encourage the development of new wireless services.